

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DWIGHT CHAMBERS,

Defendant-Appellant.

UNPUBLISHED

June 10, 2003

No. 239033

Kent Circuit Court

LC No. 00-009900-FH

Before: Smolenski, P.J., and Cooper and Fort Hood, JJ.

PER CURIAM.

Defendant was convicted by a jury of breaking and entering with intent to commit larceny, MCL 750.110. He was sentenced as a fourth habitual offender, MCL 769.12, to 6 to 20 years' imprisonment. He appeals as of right. We affirm, but remand with instructions.

Defendant first argues on appeal that the prosecution introduced insufficient evidence to support defendant's conviction, and that the verdict was against the great weight of the evidence. Specifically, defendant asserts that the prosecution failed to prove beyond a reasonable doubt that defendant was the person who committed the charged crime. We disagree.

Turning first to defendant's insufficiency of the evidence argument, evidence is sufficient to sustain a defendant's conviction if, when viewed in a light most favorable to the prosecution, it would enable a rational trier of fact to conclude that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). This Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). Circumstantial evidence and reasonable inferences arising from the evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

In this case, an eyewitness to the crime testified that the thief, who appeared to be alone, stole cartons of cigarettes from a gas station convenience store, fled in a south-easterly direction, and left the area just seconds before police arrived on the scene. The manager of the store confirmed that the only items taken in the break-in were thirteen cartons of Newport brand cigarettes, all of which were recovered that same night.

An officer arrived at the store with his tracking dog within five minutes of the break-in and the police dog immediately began tracking a path in the same direction that the eyewitness stated the perpetrator had fled. Officers followed the dog's track south to Fuller Park, finding cartons of Newport cigarettes discarded along the way. Defendant was located and apprehended in the area towards which the dog had been tracking, wearing clothes that were consistent with those worn by the perpetrator as shown in the store's surveillance video. Also, several cartons of Newport cigarettes were found within twenty feet of where defendant was arrested.

Additionally, three other police officers all testified that they had participated in the search for the perpetrator, a perimeter had been set up around Fuller Park as soon as it appeared that the suspect may have entered the park, and they saw no other people in or around the park at the time defendant was located and arrested. One officer stated that defendant was nearly dripping with sweat when he was arrested, appearing to have been physically exerting himself just before being discovered.

Defendant proffered scant contradictory testimony. Indeed, defendant's exculpatory evidence consisted solely of the police officers' testimony that no gloves or cigarettes were found on defendant's person at the time of his arrest, and testimony that the surveillance video image was not very clear. Given this evidence, we find that there was sufficient evidence from which a jury could reasonably infer that defendant was guilty of the charged offense.

Next, we turn to defendant's assertion that the verdict was against the great weight of evidence. The test is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). Looking at the whole body of proofs, we find that the evidence does not preponderate so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. In fact to the contrary, as discussed above, the evidence indicating that defendant committed the break-in far outweighs the evidence that he did not.

Defendant also argues that he was denied his constitutional right to a fair trial because the cigarette cartons found around the crime scene were not retained, and, therefore, were not available to defendant for his inspection and use in preparing his defense. Again, we disagree.

There is no general constitutional right to discovery in a criminal case. *People v Elston*, 462 Mich 751, 765; 614 NW2d 595 (2000). However, due process requires the prosecutor to disclose evidence that is both favorable to the defendant and material to the determination of guilt or punishment. *Brady v Maryland*, 373 US 83, 87; 83 S Ct 1194; 10 L Ed 2d 215 (1963); *People v Fink*, 456 Mich 449, 453-454; 574 NW2d 28 (1998). Accordingly, a defendant has a due process right to exculpatory evidence in the prosecution's possession. *Brady, supra* at 87. However, as to evidence of unknown probative value, which is thus only potentially exculpatory, loss of the evidence denies due process only when the police act in bad faith. *Arizona v Youngblood*, 488 US 51, 57-58; 109 S Ct 333; 102 L Ed 2d 281 (1988); *People v Hunter*, 201 Mich App 671, 677; 506 NW2d 611 (1993). Moreover, the defendant bears the burden of showing that the police acted in bad faith. *People v Johnson*, 197 Mich App 362, 365; 494 NW2d 873 (1992).

Defendant asserts that he was denied a potential defense by not being able to test the cartons for fingerprints. However, as this Court has stated:

Where the state has failed to preserve evidentiary material of which no more can be said than that it could have been subjected to tests, the result of which might have exonerated the defendant, the failure to preserve potentially useful evidence does not constitute a denial of due process unless a criminal defendant can show bad faith on the part of the police. [*People v Leigh*, 182 Mich App 96, 98; 451 NW2d 512 (1989).]

Defendant has made no showing of bad faith, having not even addressed the subject, nor can we perceive any. Moreover, the perpetrator appeared in the surveillance video to be wearing gloves which would prevent fingerprints from being left on the cartons. Accordingly, because defendant has not carried his burden, the loss of the evidence did not deny defendant due process.

Finally, defendant argues that the district and circuit courts committed error mandating reversal when they denied defendant's requests for a forensic evaluation on the issues of defendant's competence to stand trial and his sanity. We agree in part and disagree in part.

A criminal defendant is presumed competent to stand trial absent a showing that, because of his mental condition, he is incapable of understanding the nature of the proceedings against him or of assisting in his defense in a rational manner. MCL 330.2020(1); *People v Mette*, 243 Mich App 318, 331; 621 NW2d 713 (2000). Nonetheless, a defendant is entitled to a competency hearing when evidence demonstrates a bona fide doubt as to his competency. *People v Harris*, 185 Mich App 100, 102; 460 NW2d 239 (1990). The issue of incompetence can only be raised by evidence of incompetence. *People v Whyte*, 165 Mich App 409, 413; 418 NW2d 484 (1988). "Where such evidence was presented to the trial court, and no such hearing was held, appellate courts may order a new trial." *Id.*; internal quotation omitted. However, the decision as to the existence of a bona fide doubt will only be reversed if the trial court abused its discretion. *Id.* at 412.

Here, although defense counsel stated that she had grave concerns regarding defendant's ability to aid and assist in the preparation of his defense and asserted that defendant had a history of mental problems, defendant provided no documentation to support his allegations. Moreover, aside from referencing the fact that defendant had been treated for mental problems in the past and was currently taking prescription drugs, defense counsel failed to provide any specific facts or instances of conduct to support her claim that defendant was incompetent. Under the circumstances, we do not believe that the district and circuit courts abused their discretion in finding that defendant had failed to demonstrate a bona fide doubt as to his competency.

However, with regard to defendant's request for a forensic evaluation on the question of his sanity, we conclude that a remand is necessary. This Court has held that, pursuant to MCL 768.20a(2), a trial court has no discretion to deny a psychiatric examination by the forensic center when a defendant has asserted an insanity defense. *People v Chapman*, 165 Mich App 215, 218; 418 NW2d 658 (1987). As *Chapman* pointed out, the language of that statute is mandatory. *Id.* MCL 768.20a(2) provides in pertinent part, "Upon receipt of a notice of an intention to assert the defense of insanity, a court shall order the defendant to undergo an examination relating to his or her claim of insanity by personnel of the center for forensic psychiatry or by other qualified personnel, as applicable, for a period not to exceed 60 days from the date of the order."

In the present case, defendant timely requested a forensic evaluation on the question of his sanity. This request served to trigger defendant's right to a forensic exam under MCL 768.20a(2) and served as sufficient notice of defendant's intent to assert an insanity defense. *Chapman, supra* at 217. Therefore, the court was required to grant defendant's request for a forensic evaluation regarding his sanity, but failed to do so. Accordingly, defendant is entitled to a remand for referral to the forensic center for a psychiatric evaluation on his sanity. However, reversal at this stage is not warranted because it is unclear whether defendant would have been able to present an insanity defense had the requisite referral been made. Thus, on remand, if a triable issue regarding defendant's sanity is found to exist, then a new trial shall be held. Otherwise, defendant's conviction will stand.

Affirmed, but remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael R. Smolenski

/s/ Jessica R. Cooper

/s/ Karen M. Fort Hood